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11 *Attorneys for Defendant Pioneer Services*

12 **UNITED STATES DISTRICT COURT**
13 **DISTRICT OF NEVADA**

14 FLEMMING KRISTENSEN,

15 Plaintiff,

16 v.

17 CREDIT PAYMENT SERVICES INC., *et al.*,

18 Defendants.

Case No. 2:12-CV-00528-APG (PAL)

**PIONEER SERVICES' MOTION FOR
LEAVE TO FILE DOCUMENTS
UNDER SEAL PURSUANT TO CIVIL
L.R. 10-5**

19 Pursuant to Civil Local Rule 10-5, Defendant Pioneer Services by and through its counsel,
20 submits this Motion for Leave to File Documents Under Seal in connection with Pioneer
21 Services' First Fed. R. Civ. P. 56 Motion for Summary Judgment on Plaintiff's Claim for Relief.
22 Further Pioneer Services states as follows:

23 1. A Stipulated Protective Order was entered in this case on January 11, 2013 (Dkt.
24 32), to provide guidelines regarding the exchange of confidential information between Plaintiff
25 and all Defendants (the "Parties"). A First Amended Stipulated Protective Order was entered in
26 this case on January 30, 2014 (Dkt. 145) to add provisions for highly confidential information
27

28 **Pioneer Services' Motion for Leave
to File Under Seal**

Case No. 12-cv-00528-APG (PAL)

1 exchanged between the Parties (together, Dkt. 32 and Dkt. 145 are referred to as the “Protective
2 Order”).

3 2. Pioneer Services seeks to file the following documents designated “Confidential”
4 or “Attorneys Eyes Only” under seal pursuant to Civil Local Rule 10-5:

5 a. Exhibit B to the Declaration of Robert V. Spake, Jr. in Support of Pioneer
6 Services’ First Fed. R. Civ. P. 56 Motion for Summary Judgment on Plaintiff’s
7 Claim for Relief (“Spake Decl.”), excerpts of the deposition transcript of plaintiff
8 Flemming Kristensen, taken January 21, 2014. Because the transcript was
9 designated Confidential, pursuant to Pioneer Services’ obligations under the
10 Protective Order it is filing the excerpts under seal.

11 b. Exhibit D to the Spake Decl., excerpts of the deposition transcript of AC Referral /
12 James Gee, taken January 23, 2014. Because the transcript was designated
13 Confidential, pursuant to Pioneer Services’ obligations under the Protective Order
14 it is filing the excerpts under seal.

15 c. Exhibit E to the Spake Decl., excerpts of the deposition transcript of 360 Data /
16 Michael N. Ferry, taken January 10, 2014. Because the transcript was designated
17 Confidential, pursuant to Pioneer Services’ obligations under the Protective Order
18 it is filing the excerpts under seal.

19 d. Exhibit G to the Spake Decl., LeadPile Excel Spreadsheet containing lead data
20 from ClickMedia (*i.e.*, “thesmartcreditsolution.securelinkcorp.com”) and Buyer
21 Companies, March 2011 through February 2012. Because LeadPile designated the
22 spreadsheet Attorneys Eyes Only, pursuant to Pioneer Services’ obligations under
23 the Protective Order it is filing the spreadsheet under seal.

24 e. Exhibit I to the Spake Decl., Pioneer Services Internet Affiliate – Lead Generator
25 Report, December 2011. Pioneer Services designated the report Confidential
26
27
28

1 because it contains confidential business relationships and business activities.

2 Therefore, Pioneer Services files the report under seal.

3 f. Exhibit J to the Spake Decl., Pioneer Services Internet Affiliate – Lead Generator
4 Report, January 2012. Pioneer Services designated the report Confidential
5 because it contains confidential business relationships and business activities.
6 Therefore, Pioneer Services files the report under seal.

7 g. Exhibit K to the Spake Decl., LeadPile Excel Spreadsheet, March 2011 through
8 October 2012 (LEAD000020 – LEAD000286). Because LeadPile designated the
9 spreadsheet Confidential, pursuant to Pioneer Services’ obligations under the
10 Protective Order it is filing the spreadsheet under seal.
11

12 3. The foregoing documents in Paragraphs 2(a)-(g) have been designated
13 Confidential or Attorneys Eyes Only pursuant to the Protective Order because they contain
14 confidential and proprietary business information and private personal information. The
15 Protective Order contemplates that confidential, proprietary, or private information may be
16 disclosed during the course of discovery, and that the Parties shall follow the procedures set forth
17 in Civil Local Rule 10-5 for filing confidential documents under seal.
18

19 4. The party seeking to seal documents attached to a dispositive motion must meet
20 the compelling reasons standard. *See Golden Boy Promotions, Inc. v. Top Rank, Inc.*, 2011 WL
21 686362, at *1 (D. Nev. Feb. 17, 2011). Compelling reasons include “sales figures, advertising
22 numbers, and strategy information relating to [defendant’s] line of products.” *JL Beverage Co. v.*
23 *Beam, Inc.*, 2013 WL 1088363, at * 3 (D. Nev. Mar. 14, 2013). If these documents were made
24 public, “[d]efendants’ business strategies and success in sales would be made public to their
25 competitors” which “could result in significant harm to [d]efendants’ business.” *Id.*; accord
26 *Golden Boy*, 2011 WL 686362, at *2 (“Publication of those confidential business dealings could
27 cause harm to the litigants’ business and therefore constitutes a compelling reason to seal the
28

1 details of the Term Sheet.”). Compelling reasons also include “the protection of confidential
2 financial and personal information.” *Fed. Trade Comm’n v. Johnson*, 2013 WL 2460359, at *2
3 (D. Nev. June 6, 2013).

4 5. Here, compelling reasons exist for allowing Pioneer Services to file the above-
5 referenced exhibits under seal in order to avoid disclosure of confidential or proprietary business
6 information or private, personal information because the subject documents have all been
7 designated Confidential or Attorneys Eyes Only pursuant to the Protective Order entered into by
8 the Parties, because these documents were produced or generated during discovery subject to the
9 same Protective Order, and because they contain confidential business information and/or
10 personal information.

11
12 6. Pursuant to Civil Local Rule 10-5 and the District of Nevada’s ECF Filing
13 Procedures, contemporaneously with the filing of this Motion, Pioneer Services will file the
14 exhibits referenced in Paragraphs 2(a)-(g) above under seal and will serve a copy on all Parties, in
15 addition to delivering a paper copy to this Court.

16 WHEREFORE, Pioneer Services respectfully requests that this Court enter an Order
17 granting Pioneer Services’ Motion for Leave to File Documents Under Seal.

18
19 Dated: October 24, 2014

20 Respectfully submitted,

21 /s/ Chad R. Fears

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Attorneys for Defendant Pioneer Services

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2014, I electronically filed the foregoing PIONEER SERVICES' MOTION FOR LEAVE TO FILE DOCUMENTS UNDER SEAL with the Clerk of the Court using the CM/ECF system. Notice of this filing is sent to all counsel of record by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Dated: October 24, 2014

/s/ Julia L. Melnar

An Employee of Snell & Wilmer